

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTIN BRADY

Appeal No. 2001-1477
Application No. 09/228,109

ON BRIEF

MAILED

MAY 20 2002

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Before COHEN, ABRAMS and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 10-13.
Claims 3-5 and 7-9, the only other claims pending in this application, stand allowed.

BACKGROUND

The appellant's invention relates to a household kitchen opening appliance, particularly for opening cans, jars, bottles or bags (specification, page 1). Claim 10, the sole independent claim on appeal, reads as follows.

10. A household opening appliance comprising an electric can opener having a housing and a scissors holder on said housing capable of releasably retaining a scissors on said housing.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Rauh	2,027,785	Jan. 14, 1936
O'Bannon	3,730,391	May 1, 1973
Hoover et al. (Hoover)	4,984,368	Jan. 15, 1991

"PRESTO® Under Cabinet Automatic Can Opener Plus" manual (Presto) (National Presto Industries, Inc. 1989).

The following rejections are before us for review.

Claim 10 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Presto.

Claim 10 stands rejected under 35 U.S.C. § 102(b) as being anticipated by O'Bannon.

Claims 10-13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Presto in view of Hoover and Rauh.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 13) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 12) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims,¹ to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

In rejecting claim 10 as being anticipated by Presto and as being anticipated by O'Bannon, the examiner's position, in essence, appears to be that the flat upper ledge on the housing of the Presto can opener extending forwardly of the mounting bracket and the rear upper horizontal surface of the projecting housing portion 16 of O'Bannon are capable of holding, in the sense of supporting, a scissors and, thus, respond structurally to the "scissors holder" recited in claim 10. In reaching this determination, the examiner notes that an accepted meaning of "hold" is "to support or keep from falling or moving" (answer, page 3).

¹ Claims 11 and 13 contain an error, in that, consistent with appellant's disclosure, the sheath is a more specific recitation of the scissors holder, not a distinct element in addition to the scissors holder. Therefore, claims 11 and 13 should be amended to change "further" to --, the scissors holder--.

To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. Karsten Mfg. Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

While the flat horizontal surfaces of the Presto and O'Bannon can opener housings indeed appear capable of providing vertical support for a scissors, claim 10 requires more than this. Specifically, claim 10 calls for a scissors holder which is "capable of releasably retaining a scissors on said housing."² The flat horizontal surfaces of Presto and O'Bannon alluded to by the examiner lack the requisite structure to releasably retain a scissors on the housing and we do not find any structure on the housing of either the Presto or O'Bannon can opener which appears reasonably capable of performing such function. As neither Presto nor O'Bannon discloses each and every element and limitation of claim 10, the examiner's anticipation rejections of claim 10 cannot be sustained.

The examiner has also rejected claim 10, as well as claims 11-13 which depend from claim 10, as being unpatentable over Presto in view of Hoover and Rauh. Hoover discloses an emergency scissors for cutting through a jammed seat belt of a motor

² Appellant's disclosed structure for performing this function, as illustrated in Figure 3 and discussed in the paragraph bridging pages 5 and 6 of appellant's specification, comprises a sheath 50 formed by the rear wall of the housing and a cover member 54, the sheath being provided with a pair of cooperating spring metal clamp members 60, 62 for releasably retaining the scissors 52 within the sheath.

vehicle, a sheath 28 having a pouch 30 for storing the scissors when not in use and hook and loop fastener elements for attaching the sheath 28 to an interior surface 32, such as a dashboard of a motor vehicle. Rauh discloses conventional shears provided with a hook element 15 on the bow thereof for removing crimped-on bottle caps, as illustrated in Figure 3. The examiner's position in making the rejection, as set forth on page 4 of the answer, is as follows:

The Presto can opener shows a combination device that includes a bag opener and can opener. Combinations of cutters and jar openers, ie. scissors and bottle openers, are old as shown by Rauh. The advantage of this combination device over the Presto device is that it can cut more than bags. The problem is how to attach it to a can opener. The answer is supplied by Hoover et al. who shows a sheath style nonuse support. The sheath would obviously hold the scissors to any suitable support. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to equip the Presto can opener with a sheath as shown by Hoover to hold the scissor/opener of Rauh. Obviously then the slitter and jar opener of the [P]resto can opener would be unnecessary. The motivation would be obviously to produce a more versatile device.

We share the examiner's view that the sheath taught by Hoover *could* be attached to any suitable support, but we fail to perceive any teaching, suggestion or incentive in the applied references which would have motivated an artisan to attach either the shear/bottle opener utensil of Rauh or the sheath taught by Hoover to the housing of an electric can opener, such as that of Presto. Even assuming the examiner is correct that the combination of the Rauh utensil with the Presto can opener would

yield a more versatile device³, the applied references are devoid of any recognition of such a versatility advantage from the proposed combination. From our perspective, the only suggestion for putting the selected pieces from the references together in the manner proposed by the examiner is found in the luxury of hindsight accorded one who first viewed the appellant's disclosure. This, of course, is not a proper basis for a rejection. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

In light of the foregoing, we conclude that the combined teachings of Presto, Hoover and Rauh are insufficient to suggest the subject matter of claims 10-13. Thus, we shall not sustain the examiner's rejection of these claims under 35 U.S.C. § 103.

³ The Presto can opener, with its can, bottle, bag and jar opening equipment is already quite versatile and it is not apparent to us that the addition of a shear/bottle opener would provide any further advantage or versatility in opening items.

CONCLUSION

To summarize, the decision of the examiner to reject claim 10 under 35 U.S.C. § 102(b) and claims 10-13 under 35 U.S.C. § 103 is reversed.

REVERSED



IRWIN CHARLES COHEN
Administrative Patent Judge



NEAL E. ABRAMS
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge

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